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Complaint No. #14-11

CONSENT AGREEMENT AND ORDER FOR PROBATION

AND ORDER FOR PROBATION

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14-1

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DEF

**KEEP
FOR**

FOR

1 review, reconsideration, appeal, judicial review or any other administrative and/or
2 judicial action, concerning the matters set forth herein. Respondent affirmatively agrees
3 that this Consent Agreement shall be irrevocable.

4 3. Respondent agrees that the Board may adopt this Consent Agreement or
5 any part of this agreement, under A.R.S. § 32-2047 (7). Respondent understands that the
6 Board may consider this Consent Agreement or any part of it in any future disciplinary
7 action against him.

8 4. Respondent understands that this Consent Agreement does not constitute a
9 dismissal or resolution of other matters currently pending before the Board, *if any*, and
10 does not constitute any waiver, express or implied, of the Boards statutory authority or
11 jurisdiction regarding any other pending or future investigation, action or proceeding.

12 5. All admissions Respondent makes in this Consent Agreement are made
13 solely for the final disposition of this matter, and any related administrative proceedings
14 or civil litigation involving the Board and Respondent.

15 6. By agreeing to allow the Board to impose the discipline ordered herein,
16 Respondent acknowledges that the Board has evidence from which it could impose
17 discipline under A.R.S. § 32-2047.

18 7. Respondent acknowledges and agrees that, upon signing this Consent
19 Agreement and returning this document to the Board, Respondent may not revoke
20 acceptance of the Consent Agreement or make any modifications to the document. Any
21 modification to this original document is ineffective and void unless mutually approved
22 by the parties in writing.

23 8. Respondent understands that the foregoing Consent Agreement shall not
24 become effective unless and until the Board adopts it and the Board President signs it.
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1 9. Respondent understands and agrees that if the Board does not adopt this
2 Consent Agreement, Respondent will not assert as a defense that the Board's
3 consideration of it constitutes bias, prejudice, prejudgment or other similar defense in any
4 future disciplinary action.

5 10. Respondent understands that this Consent Agreement is a public record that
6 may be publicly disseminated as a formal action of the Board and will be reported to all
7 required State and Federal reporting agencies, including the National Practitioner Data
8 Bank. Respondent further understands that this Consent Agreement may be considered
9 by the Board in determining disciplinary sanctions in future cases.

10 11. Respondent understands that any violation of this Consent Agreement
11 could be grounds for further disciplinary action by the Board. A.R.S. § 32-2044 (1).

12
13 7-14-14
14 **DATED**

15
16 Michael R. Duncan
17 Michael Duncan, PT
18 Respondent

19
20 **FINDINGS OF FACT**

21 12. The Arizona Board of Physical Therapy is that body politic created and
22 empowered pursuant to A.R.S. §32-2001 *et seq.* to administer the laws of the State of
23 Arizona relating to the practice of physical therapy.

24 13. Respondent holds License No. 10347 for working as a physical therapist in
25 the State of Arizona.

26 14. On October 17, 2013, Respondent provided physical therapy treatment to
patient M.P. Respondent did not maintain clean needle techniques by maintaining a clean
field, free of contaminants, when he penetrated the skin through clothing in the
performance of dry needling endangering the patient for potential infection.

 15. On October 17, 2013, during the course of treatment for patient M.P.
Respondent did not maintain visual contact with the site of skin puncture when placing

1 the needle into the skin as the patient's clothes would have obscured visualization placing
2 the patient for potential harm regarding location and depth of the needle.

3 16. Respondent failed to complete an adequate evaluation of the shoulder,
4 cervical and thoracic spine prior to determination of treatment interventions for patient
5 MP.

6 17. During the course of the Board's investigation, Respondent acknowledged
7 patient M.P. was not the only patient he treated with Dry Needling through the patient's
8 clothing.

9 18. Respondent violated his company policy regarding maintaining clean
10 technique and disrobing the area to engage in dry needling.

11 19. Respondent failed to maintain adequate patient records as required in
12 A.R.S. §32-2044(20) for patients M.P., D.M., R.A., and R.V.

13 20. During the course of the Board's investigation, Respondent provided
14 information that four physical therapists, working in the same clinic as Respondent, had
15 performed Dry Needling treatment through patients clothing.

16 CONCLUSIONS OF LAW

17 21. The Board has jurisdiction over this matter pursuant to A.R.S. § 32-2001, *et*
18 *seq.* and the rules promulgated by the Board relating to the practice of physical therapy.

19 22. The conduct and circumstances as stated in the above Findings of Fact
20 constitute a violation of A.R.S. §32-2044(1) ("Violating this chapter, board rules or a
21 written board order").

22 23. The conduct and circumstances as stated in the above Findings of Fact
23 constitute a violation of A.R.S. §32-2044(4) ("Engaging in the performance of
24 substandard care by a physical therapist due to a deliberate or negligent act or failure to
25 act regardless of whether actual injury to the patient is established.")

26 24. The conduct and circumstance as stated in the above Findings of Fact
constitute a violation of A.R.S. §32-2044(12) ("Failing to adhere to the recognized
standards of ethics of the physical therapy profession.")

25. The conduct and circumstance as stated in the above Findings of Fact constitute a violation of A.R.S. §32-2044(17) (“Failing to report to the board any direct knowledge of an unprofessional, incompetent or illegal act that appears to be in violation of this chapter or board rules.”)

26. The conduct and circumstance as stated in the above Findings of Fact constitute a violation of A.R.S. §32-2044(20) (“Failing to maintain adequate patient records. For the purposes of this paragraph, “adequate patient records” means legible records that comply with board rules and that contain at a minimum an evaluation of objective findings, a diagnosis, the plan of care, the treatment record, a discharge summary and sufficient information to identify the patient.”)

ORDER

Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED AS FOLLOWS:

27. **Restricted License:** Effective on the effective date of this Order, respondent's license to work as a physical therapist in the State of Arizona is restricted. During the period of twelve (12) months, Respondent **shall not perform dry needling interventions** in the State of Arizona. Following the period of 12 months respondent pay petition the Board, in writing and appear in person before the Board, to lift the restriction. Lifting of the restriction is at the sole discretion of the Board.

28. **Probation:** The Arizona Board of Physical Therapy hereby orders that Respondent, holder of License No. 10347, be placed on probation for a period of twenty-**four (24) months** to commence upon execution of this Order. The probation may be extended or other enforcement actions taken, after notice and an opportunity for a hearing, in the event Respondent violates this Order or violates the Arizona Physical Therapy Practice Act. The Board orders Respondent to comply with the following terms and conditions of probation:

1 29. Continuing Education: Respondent shall complete continuing
2 education courses as prescribed below within **six months** of the effective date of this
3 order. Any continuing education approved and credited for use in complying with the
4 conditions of the order are in addition to the continuing competence activities required
5 for renewal of an Arizona physical therapist license.

6 a. **Documentation**- Respondent shall complete a minimum of eight (8)
7 hours of continuing education in documentation. Respondent shall request preapproval in
8 writing. The course(s) must be preapproved in writing by Board staff and Respondent
9 must provide documentation of completing the course to Board staff upon completion.
10 Board staff will not approve any course that is given online.

11 b. **Differential Diagnosis**- Respondent shall complete a minimum of eight
12 (8) hours of continuing education in differential diagnosis. Respondent shall request
13 preapproval in writing. The course(s) must be preapproved in writing by Board staff and
14 Respondent must provide documentation of completing the course to Board staff upon
15 completion. Board staff will not approve any course that is given online.

16 30. **Documentation Review**: Between 90 days and 120 days of the completion
17 of Respondent's continuing education, the Board's Investigator will perform a minimum
18 of one review of three (3) randomly selected charts for patients treated by Respondent.
19 Respondent must contact the Board's Investigator and provide the Investigator with a list
20 of patients Respondent has treated during a period of time designated by the Board
21 Investigator. The purpose of the review is to assess compliance with the Board's statutes
22 and rules. If review of the charts described above reveal that the Respondent's records are
23 not in compliance with the Board's statutes and rules, Respondent shall submit to
24 additional reviews of patient charts where the Board's Investigator will perform another
25 review of three (3) randomly selected charts for patients treated by Respondent. The
26 purpose of the reviews is to assess compliance with the Board's statutes and rules.
Respondent may petition the Board for relief of the reviews if respondent disagrees with
the Board Investigator's findings.

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2 31. **Costs:** Respondent shall be responsible for any and all costs associated
3 with his compliance with this Order. If Respondent fails to timely comply with any of the
4 provisions of this Order, the Board may direct that the matter proceed to a noncompliance
5 hearing for revocation of Respondent's license.

6 32. **Tolling:** In the event Respondent should leave Arizona to reside or
7 practice outside the State or for any reason should Respondent stop practicing physical
8 therapy in Arizona, Respondent shall notify the Board in writing within ten days of
9 departure and return or the dates of non-practice within Arizona. Non-practice is defined
10 as any period of time exceeding thirty days during which Respondent is not engaging in
11 the practice of physical therapy. Periods of temporary or permanent residence or practice
12 outside Arizona or of non-practice within Arizona, will not apply to the reduction of the
13 probationary period.

14 33. **Obey All Laws:** Respondent shall obey all state, federal and local laws,
15 and all rules governing the practice of physical therapy in Arizona.

16 This Order shall be effective as of the date of entry below.

17 DATED this 8th day of August, 2014.

18 ARIZONA BOARD OF
19 PHYSICAL THERAPY

20
21 *Lisa Akers PTMS*

22
23 _____
24 Lisa Akers, PT, M.S.
25 Board President
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1 ORIGINAL of the foregoing filed this 8th day of August, 2014 with:
2 Arizona Board of Physical Therapy
3 4205 North 7th Avenue, Suite 208
Phoenix, AZ 85013

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5 COPY of the foregoing mailed this 8th day of August, 2014 to:
6 Certified Mail # 7012 1640 0001 6968 0979
7 Mr. Michael Duncan, PT
1150 North Eldorado Place #8261
Tucson, AZ 85715

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9 Mona Baskin, Assistant Attorney General
10 1275 W. Washington, CIV/LES
Phoenix, AZ 85007
Attorney for the Board

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14 By: 